

## **EXHIBIT 36**

1 Patrick R. Kitchin, Esq. (SBN 162965)  
2 **THE LAW OFFICE OF PATRICK R. KITCHIN**  
3 565 Commercial Street, 4<sup>th</sup> Floor  
4 San Francisco, CA 94111  
5 Telephone: (415) 677-9058  
6 Facsimile: (415) 627-9076  
7 Attorneys for Plaintiffs

**FILED**  
San Francisco County Superior Court

FEB 07 2007

GORDON PARK-LI, Clerk  
BY: Gordon Park-Li Deputy Clerk

8 Daniel Feder (State Bar No. 130867)  
9 **THE LAW OFFICES OF DANIEL FEDER**  
10 807 Montgomery Street  
11 San Francisco, CA 94133  
12 (415) 391-9476

13 Counsel to Ann Otsuka, Janis Keefe, Corinne Phipps,  
14 and Justin Kiser

15  
16 SUPERIOR COURT OF CALIFORNIA  
17 FOR THE CITY AND COUNTY OF SAN FRANCISCO

18 ANN OTSUKA, an individual; JANIS  
19 KEEFE, an individual; CORINNE PHIPPS, an  
20 individual; and JUSTIN KISER, an individual;  
21 and on behalf of all others similarly situated,

22 Plaintiffs,

23 vs.

24 POLO RALPH LAUREN CORPORATION; a  
25 Delaware Corporation; POLO RETAIL, LLC.,  
26 a Delaware Corporation; POLO RALPH  
27 LAUREN CORPORATION, a Delaware  
Corporation, doing business in California as  
POLO RETAIL CORP; FASHIONS OUTLET  
OF AMERICA, INC., a Delaware Corporation  
and DOES 1-500, inclusive

Defendants.

Case No.: CGC-06-452655

**ORDER OVERRULING IN PART AND  
SUSTAINING IN PART DEFENDANTS'  
DEMURRER TO PLAINTIFFS' FIRST  
AMENDED COMPLAINT**

Date: January 22, 2007

Time: 9:30 a.m.

Department: 304

Hon Richard Kramer

Complaint Filed: May 30, 2006

28 The demurrer of Defendants Polo Ralph Lauren Corporation, Polo Retail, LLC, Fashions  
29 Outlet of America, Inc., and Polo Retail Corporation (collectively referred to herein as  
30 "Defendants" or "Polo") to the First Amended Complaint ("Complaint") of Plaintiffs Ann  
31 Otsuka, an individual, Janis Keefe, an individual, Corinne Phipps, an individual, and Justin  
32 Kiser, an individual, and on behalf of all others similarly situated (collectively referred to herein

1 as "Plaintiffs") having come on regularly for hearing before this court on January 22, 2007, and  
2 the pleadings and oral arguments have been considered by the court, and good cause appearing  
3 therefor,

4 IT IS HEREBY ORDERED as follows:

- 5 1. Polo's demurrer to the First Cause of Action to the Complaint for alleged Fraud is  
6 OVERRULED.
- 7 2. Polo's demurrer to the Second Cause of Action to the Complaint for alleged False  
8 Imprisonment is OVERRULED as to Plaintiff Justin Kiser, and SUSTAINED  
9 WITHOUT LEAVE TO AMEND as to Plaintiffs Ann Otsuka, Janis Keefe and  
10 Corinne Phipps.
- 11 3. Polo's demurrer to the Seventh Cause of Action to the Complaint for alleged  
12 violations of California Labor Code § 226.7 is OVERRULED as to Plaintiff Justin  
13 Kiser.
- 14 4. Polo's demurrer to the Eighth Cause of Action to the Complaint for alleged violations  
15 of California Labor Code § 226.7 is OVERRULED as to Plaintiff Justin Kiser, and  
16 SUSTAINED WITHOUT LEAVE TO AMEND as to Plaintiffs Ann Otsuka, Janis  
17 Keefe and Corinne Phipps.
- 18 5. Polo's demurrer to the Eleventh Cause of Action to the Complaint for alleged Unjust  
19 Enrichment is SUSTAINED WITHOUT LEAVE TO AMEND.
- 20 6. Polo's demurrer to the Thirteenth Cause of Action to the Complaint for alleged  
21 violations of Labor Code §§ 2699, et seq., is OVERRULED as to Plaintiff Justin  
22 Kiser, and SUSTAINED WITHOUT LEAVE TO AMEND as to Plaintiffs Ann  
23 Otsuka, Janis Keefe and Corinne Phipps.

24 ///

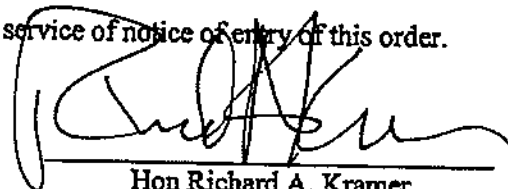
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1 Defendants are hereby ordered to file their response to Plaintiff's First Amended  
2 Complaint within 10 calendar days from service of notice of entry of this order.

3  
4 Dated: 2-5-07

  
Hon Richard A. Kramer  
Judge of the Superior Court

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7  
8 Approved as to Form on this 25 day of January, 2007:

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11 William J. Goines, Esq.  
12 Counsel to Defendants  
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## **EXHIBIT 37**

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807 Montgomery Street  
San Francisco, CA 94133  
(415) 391-9476  
Attorneys for Ann Otsuka, Janis Keefe, Corinne Phipps and Justin Kiser

ENDORSED  
FILED  
San Francisco County Superior Court  
FEB 13 2007  
GORDON PARK-LI, Clerk  
BY Deputy Clerk

**SUPERIOR COURT OF CALIFORNIA, CITY AND COUNTY OF SAN FRANCISCO**

ANN OTSUKA, an individual; JANIS KEEFE, ) Case No.: CGC-06-452655  
an individual; CORINNE PHIPPS, an )  
individual; and JUSTIN KISER, an individual; ) **NOTICE OF ENTRY OR ORDER**  
individually and on behalf of all others similarly ) **OVERRULING IN PART AND**  
situated, ) **SUSTAINING IN PART DEFENDANTS'**  
 ) **DEMURRER TO PLAINTIFF'S FIRST**  
 ) **AMENDED COMPLAINT**

Plaintiffs,  
vs.

POLO RALPH LAUREN CORPORATION; a )  
Delaware Corporation; POLO RETAIL, LLC., a )  
Delaware Corporation; POLO RALPH )  
LAUREN CORPORATION, a Delaware )  
Corporation, doing business in California as )  
POLO RETAIL CORP; FASHIONS OUTLET )  
OF AMERICA, INC., a Delaware Corporation )  
and DOES 1-500, inclusive )

Defendants.

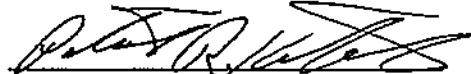
**TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:**

PLEASE TAKE NOTICE, on February 5, 2007, the San Francisco Superior Court,

1 Department 304, issued an Order Overruling in Part and Sustaining in Part Defendants' Demurrer  
2 to Plaintiff's First Amended Complaint. A conformed copy of that order is attached hereto.  
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4

5 Dated: February 9, 2007

THE LAW OFFICE OF PATRICK R. KITCHIN

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By: Patrick R. Kitchen  
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ENDORSED  
FILED  
San Francisco County Superior Court

FEB - 7 2007

GORDON PARK-LI, Clerk  
BY: FELICIA M. GREEN  
Deputy Clerk

Patrick R. Kitchin, Esq. (SBN 162965)  
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Telephone: (415) 677-9058  
Facsimile: (415) 627-9076  
Attorneys for Plaintiffs

Daniel Feder (State Bar No. 130867)  
**THE LAW OFFICES OF DANIEL FEDER**  
807 Montgomery Street  
San Francisco, CA 94133  
(415) 391-9476

Counsel to Ann Otsuka, Janis Keefe, Corinne Phipps,  
and Justin Kiser

## SUPERIOR COURT OF CALIFORNIA

## FOR THE CITY AND COUNTY OF SAN FRANCISCO

ANN OTSUKA, an individual; JANIS  
KEEFE, an individual; CORINNE PHIPPS, an  
individual; and JUSTIN KISER, an individual;  
and on behalf of all others similarly situated,

Plaintiffs,

vs.

POLO RALPH LAUREN CORPORATION; a  
Delaware Corporation; POLO RETAIL, LLC.,  
a Delaware Corporation; POLO RALPH  
LAUREN CORPORATION, a Delaware  
Corporation, doing business in California as  
POLO RETAIL CORP; FASHIONS OUTLET  
OF AMERICA, INC., a Delaware Corporation  
and DOES 1-500, inclusive

Defendants.

Case No.: CGC-06-452655

**ORDER OVERRULING IN PART AND  
SUSTAINING IN PART DEFENDANTS'  
DEMURRER TO PLAINTIFFS' FIRST  
AMENDED COMPLAINT**

Date: January 22, 2007

Time: 9:30 a.m.

Department: 304

Hon Richard Kramer

Complaint Filed: May 30, 2006

The demurrer of Defendants Polo Ralph Lauren Corporation, Polo Retail, LLC, Fashions  
Outlet of America, Inc., and Polo Retail Corporation (collectively referred to herein as  
"Defendants" or "Polo") to the First Amended Complaint ("Complaint") of Plaintiffs Ann  
Otsuka, an individual, Janis Keefe, an individual, Corinne Phipps, an individual, and Justin  
Kiser, an individual, and on behalf of all others similarly situated (collectively referred to herein

1 as "Plaintiffs") having come on regularly for hearing before this court on January 22, 2007, and  
2 the pleadings and oral arguments have been considered by the court, and good cause appearing  
3 therefor,

4 IT IS HEREBY ORDERED as follows:

- 5 1. Polo's demurrer to the First Cause of Action to the Complaint for alleged Fraud is  
6 OVERRULED.
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8 Imprisonment is OVERRULED as to Plaintiff Justin Kiser, and SUSTAINED  
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17 Keefe and Corinne Phipps.
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- 20 6. Polo's demurrer to the Thirteenth Cause of Action to the Complaint for alleged  
21 violations of Labor Code §§ 2699, et seq., is OVERRULED as to Plaintiff Justin  
22 Kiser, and SUSTAINED WITHOUT LEAVE TO AMEND as to Plaintiffs Ann  
23 Otsuka, Janis Keefe and Corinne Phipps.

24 ///

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1 Defendants are hereby ordered to file their response to Plaintiff's First Amended  
2 Complaint within 10 calendar days from service of notice of entry of this order.

3  
4 Dated: 2-5-07

RICHARD A. KRAMER

Hon Richard A. Kramer  
Judge of the Superior Court

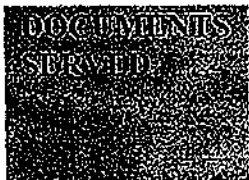
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8 Approved as to Form on this 25 day of January, 2007:

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10 William J. Goines, Esq.  
11 Counsel to Defendants  
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### PROOF OF SERVICE

1. I, Karla Donis, the below signed declare, I am employed, in the County of San Francisco, State of California. I am over the age of 18 and not a party to the within action; my business address is 565 Commercial Street, 4<sup>th</sup> Floor, San Francisco, California 94111.
2. I am familiar with the office practice for depositing U.S. Mail, facsimile transmission and Federal Express routing. In addition, I am familiar with both State and Local Rules regarding use of recycled paper and represent this document and all documents referred to herein comply with applicable recycled paper use requirements.
3. On February 13, 2007, I served the following documents on the parties identified as follows:

**William J. Goines, Esq.**  
**Greenberg Traurig, LLP**  
**1900 University Ave., 5<sup>th</sup> Floor**  
**East Palo Alto, CA 94303**



- **NOTICE OF ENTRY OR ORDER OVERRULING IN PART AND SUSTAINING IN PART DEFENDANTS' DEMURRER TO PLAINTIFF'S FIRST AMENDED COMPLAINT.**

4. The manner of service is indicated below. Please check one.

## PERSONAL SERVICE

I caused each such document, in an envelope, to be served by hand on the person listed above.

X	<div style="display: flex; justify-content: space-between;"> <span>U.S. SYMPHONIC</span> <span>1974</span> </div>
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I caused each such document, in an envelope, with first-class postage thereon fully pre-paid, to be deposited with the U.S. Mail in San Francisco, California.



I caused each such document, to be transmitted by facsimile to the facsimile number known by me to be the facsimile number Of each of the parties listed on the attached service list.

## MODERN EXTRUDED

I caused each such document, in an envelope, with Federal Express postage, postage pre-paid, to be deposited with Federal Express in San Francisco, California.



I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

  
\_\_\_\_\_  
Karla Donis

2/13/07  
\_\_\_\_\_  
Date

## **EXHIBIT 38**

FEB 28/07

WILLIAM J. GOINES (SBN 061290)  
 JEREMY A. MEIER (SBN 139849)  
 ALISHA M. LOUIE (SBN 240863)  
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 1900 University Avenue, Fifth Floor  
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 louiea@gtlaw.com

ENDORSED FILED  
 SUPERIOR COURT  
 COUNTY OF SAN FRANCISCO

FEB 28 2007

GORDON PARK-LI, CLERK

BY: DEBBY STARK

BRIAN S. COUSIN (PRO HAC VICE)  
 NEIL A. CAPOBIANCO (PRO HAC VICE)  
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Attorneys for Defendants Polo Ralph Lauren  
 Corporation; Polo Retail, LLC; Polo Ralph Lauren  
 Corporation, doing business in California as Polo  
 Retail Corporation; and Fashions Outlet of  
 America, Inc.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN FRANCISCO

ANN OTSUKA, an individual; JANIS  
 KEEFE, an individual; CORINNE PHIPPS,  
 an individual; and JUSTIN KISER, an  
 individual; and on behalf of all other similarly  
 situated,

Plaintiff(s),

v.

POLO RALPH LAUREN CORPORATION,  
 a Delaware Corporation; POLO RETAIL,  
 LLC, a Delaware Corporation; POLO  
 RALPH LAUREN CORPORATION, a  
 Delaware Corporation, doing business in  
 California as POLO RETAIL CORP;  
 FASHIONS OUTLET OF AMERICA, INC.,  
 a Delaware Corporation and DOES 1-500,  
 inclusive,

Defendant(s).

Case No. CGC-06-452655

DEFENDANTS POLO RALPH LAUREN  
 CORPORATION; POLO RETAIL, LLC;  
 POLO RALPH LAUREN CORPORATION,  
 DOING BUSINESS IN CALIFORNIA AS  
 POLO RETAIL CORPORATION; AND  
 FASHIONS OUTLET OF AMERICA, INC.'S  
 ANSWER TO FIRST AMENDED  
 COMPLAINT

**BY FAX**

Date Action Filed: May 30, 2006

Defendants POLO RALPH LAUREN CORPORATION, a Delaware Corporation; POLO RETAIL, LLC, a Delaware Corporation; POLO RALPH LAUREN CORPORATION, a Delaware Corporation, doing business in California as POLO RETAIL CORP; and FASHIONS OUTLET OF AMERICA, INC., a Delaware Corporation ("POLO" or "Defendants"), for themselves alone and for no other defendants, hereby answer the unverified First Amended Complaint of Plaintiffs ANN OTSUKA, an individual; JANIS KEEFE, an individual; CORINNE PHIPPS, an individual; and JUSTIN KISER, an individual; and on behalf of all other similarly situated ("Plaintiffs") as follows:

### **GENERAL DENIAL**

Pursuant to California Code of Civil Procedure §431.30(d), Defendants generally deny each and every allegation and cause of action contained in the First Amended Complaint, as effected by the Court's February 13, 2007 Order Overruling in Part and Sustaining in Part Defendants' Demurrer to Plaintiffs' First Amended Complaint. Defendants further deny that Plaintiffs are entitled to the relief requested or any relief at all, and that Plaintiffs sustained or will sustain damages in the sum or sums alleged, or any other sum or sums, or at all. Defendants further deny that Plaintiffs are entitled to attorneys' fees in the sum or sums alleged, or any other sum or sums, or at all.

### **JURISDICTION AND VENUE**

Defendants specifically reserve the right to remove this action to United States District Court based on 28 U.S.C. §1441, *et. seq.* or 28 U.S.C. §1453, *et. seq.* ("the Class Action Fairness Act of 2005" or "CAFA"). Discovery in this action is ongoing and Defendants' Answer should not be construed as a waiver of the right to seek removal under either traditional diversity grounds or under CAFA.

### **AFFIRMATIVE DEFENSES**

#### **FIRST AFFIRMATIVE DEFENSE**

(Failure to State a Cause of Action)

The First Amended Complaint fails to state a cause of action upon which relief may be granted.

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1 SECOND AFFIRMATIVE DEFENSE

2 (Failure to Mitigate)

3 Plaintiffs have failed to mitigate their alleged damages, and have failed to exercise due  
4 diligence in an effort to mitigate their damages.

5 THIRD AFFIRMATIVE DEFENSE

6 (Lack of Causation)

7 Defendants did not cause any damages alleged by Plaintiffs.

8 FOURTH AFFIRMATIVE DEFENSE

9 (Estoppel)

10 Plaintiffs' action is barred by the doctrine of estoppel. Plaintiffs are estopped from asserting  
11 the claims set forth in their First Amended Complaint by reason of their own conduct, actions or  
12 inactions, and are barred, in whole or in part, from the relief sought therein.

13 FIFTH AFFIRMATIVE DEFENSE

14 (Waiver)

15 Plaintiffs' First Amended Complaint, and each cause of action therein, is barred by the  
16 doctrine of waiver, in whole or in part, by virtue of their own conduct, actions, or inaction.

17 SIXTH AFFIRMATIVE DEFENSE

18 (Unclean Hands)

19 Plaintiffs' First Amended Complaint, and each cause of action alleged therein, is barred by  
20 the doctrine of Unclean Hands.

21 SEVENTH AFFIRMATIVE DEFENSE

22 (*in pari delicto*)

23 Plaintiffs' action is barred by the doctrine of *in pari delicto*.

24 EIGHTH AFFIRMATIVE DEFENSE

25 (Laches)

26 Plaintiffs' action is barred by the doctrine of laches.

1 NINTH AFFIRMATIVE DEFENSE

2 (Ratification)

3 Plaintiffs' action is barred by the doctrine of ratification, confirmation and acquiescence.

4 TENTH AFFIRMATIVE DEFENSE

5 (Statute of Limitations)

6 Plaintiffs' claims are barred by the applicable Statute of Limitations, including but not limited  
7 to those as set forth in California Code of Civil Procedure Sections 335.1, 337, 338, and 340,  
8 California Government Code Sections 12960 and 12965, and in California Business and Professions  
9 Code Section 17208, and in any other relevant statutes of limitation.

10 ELEVENTH AFFIRMATIVE DEFENSE

11 (Good Faith)

12 Defendants acted reasonably and in good faith at all times, based on all relevant facts and  
13 circumstances known by them at the time that they acted. Accordingly, Plaintiffs are barred, in  
14 whole or in part, from any recovery in this action.

15 TWELFTH AFFIRMATIVE DEFENSE

16 (Excuse of Performance)

17 Plaintiffs' First Amended Complaint, and each and every cause of action therein, fail because  
18 Defendants were excused from performing any alleged obligations.

19 THIRTEENTH AFFIRMATIVE DEFENSE

20 (Claims Barred)

21 Plaintiffs' claims are barred in whole or in part because Plaintiffs failed to properly discharge  
22 their duties and obligations under the terms of their alleged employment contracts with Defendants.

23 FOURTEENTH AFFIRMATIVE DEFENSE

24 (Meal and Rest Breaks Provided)

25 Plaintiffs' claims are barred in whole or in part because Plaintiffs were given the opportunity  
26 to take rest and/or meal breaks but they voluntarily elected not to.

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FIFTEENTH AFFIRMATIVE DEFENSE

*(De Minimis)*

To the extent that Plaintiffs' meal and/or rest breaks were untimely or short by just a few minutes, Plaintiffs' meal and/or rest break claims constitute irrelevant *de minimis* violations.

SIXTEENTH AFFIRMATIVE DEFENSE

*(Failure to Plead Facts Sufficient to Support Punitive Damages)*

Plaintiffs are not entitled to recover any punitive or exemplary damages and any averments with respect thereto should be stricken because:

a. Plaintiffs have failed to plead facts sufficient to support oppression, fraud and/or malice; and/or

b. Plaintiffs have failed to plead facts sufficient to support gross or reckless disregard for the rights of Plaintiffs or that Defendants were motivated by evil motive or intent; and/or

c. Defendants did not commit any alleged oppressive, fraudulent or malicious act, nor authorized or ratified such an act.

SEVENTEENTH AFFIRMATIVE DEFENSE

*(No Recovery for Statutory Penalties and Punitive Damages)*

Punitive damages are not available in addition to Labor Code penalties because a penalty on a penalty is not permitted.

EIGHTEENTH AFFIRMATIVE DEFENSE

*(No Damages)*

Defendants are informed and believe and based thereon allege that Plaintiffs have not suffered any damage as a result of any actions taken by Defendants, and Plaintiffs are thereby barred from asserting any claim against Defendants.

NINETEENTH AFFIRMATIVE DEFENSE

*(De Minimis Non Curat Lex)*

Plaintiffs are seeking compensation for trivial, non-compensable time spent before and after their principal work activities.

1                                    TWENTIETH AFFIRMATIVE DEFENSE

2                                    (Privilege)

3            The actions of Defendants as alleged in the First Amended Complaint were based on  
4 Defendants' legitimate economic interests, and on that basis, were privileged.

5                                    TWENTY-FIRST AFFIRMATIVE DEFENSE

6                                    (Defendants' Right to Attorneys' Fees)

7            Defendants are entitled to recover all attorneys' fees and costs incurred herein, insofar as any  
8 and all of the claims alleged in the First Amended Complaint are frivolous, unreasonable or without  
9 foundation.

10                                  TWENTY-SECOND AFFIRMATIVE DEFENSE

11                                  (Management Discretion)

12            Any and all conduct about which Plaintiffs complain and which is attributed to Defendants  
13 was a just and proper exercise of management discretion, was undertaken for fair and honest reasons,  
14 and was regulated by good faith under the circumstances existing at all times mentioned in Plaintiffs'  
15 First Amended Complaint.

16                                  TWENTY-THIRD AFFIRMATIVE DEFENSE

17                                  (Justification)

18            The conduct alleged in the First Amended Complaint, and in each cause of action alleged, was  
19 justified by business necessity.

20                                  TWENTY-FOURTH AFFIRMATIVE DEFENSE

21                                  (Ratification)

22            Plaintiffs' claims are barred, in whole or in part, by the doctrine of ratification, consent and  
23 acquiescence.

24                                  TWENTY-FIFTH AFFIRMATIVE DEFENSE

25                                  (No Class Exists)

26            Plaintiffs' First Amended Complaint and the alleged causes of action do not state facts  
27 sufficient to certify a class. Class action treatment is improper because the acts or omissions about  
28

1 which Plaintiffs complain are individualized issues about which no illegal or improper Polo policy or  
2 practice exists. Further, the class that plaintiffs seek to represent is ill-defined.

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4 TWENTY-SIXTH AFFIRMATIVE DEFENSE

5 (Individual Issues Predominate)

6 Class action treatment is improper because individualized issues amongst Plaintiffs  
7 predominate.

8 TWENTY-SEVENTH AFFIRMATIVE DEFENSE

9 (Class Action Unworkable)

10 Class action treatment is improper because individualized issues would render such a class  
11 action impractical and unworkable.

12 TWENTY-EIGHTH AFFIRMATIVE DEFENSE

13 (Improper Class Representative)

14 Plaintiffs are not proper class representatives. Plaintiffs will not fairly or adequately protect  
15 the interests of the class they seek to represent. Plaintiffs' claims and Defendants' individualized  
16 defenses thereto are not typical of the class that plaintiffs seek to represent.

17 TWENTY-NINTH AFFIRMATIVE DEFENSE

18 (No Class Wide Injury)

19 Defendants aver that there has been no class-wide injury as alleged by the named Plaintiffs.  
20 The injuries for which recovery is sought by the named Plaintiffs on behalf of the purported class  
21 cannot be recovered without proof by each class member as to the specific facts underlying the  
22 violations alleged by each class member and the losses allegedly suffered as a direct and proximate  
23 result of each such alleged violation.

24 THIRTIETH AFFIRMATIVE DEFENSE

25 (Due Process)

26 Defendants' rights to due process under the United States and California Constitutions would  
27 be violated if this action were tried as a class action.

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THIRTY-FIRST AFFIRMATIVE DEFENSE

(Accord and Satisfaction)

Plaintiffs' action is barred, in whole or in part, by the doctrine of accord and satisfaction.

THIRTY SECOND AFFIRMATIVE DEFENSE

(Set Off)

Plaintiffs' action is barred, in whole or in part, by the doctrine of set off and payment in satisfaction.

THIRTY-THIRD AFFIRMATIVE DEFENSE

(Exemption)

Plaintiffs' action is barred, in whole or in part, by virtue of Plaintiffs' exempt status pursuant to California Industrial Welfare Commission orders and regulations including, but not limited to, Order No. 7-2001.

THIRTY-FOURTH AFFIRMATIVE DEFENSE

(Commissioned Inside Sales Employee Exemption)

Plaintiffs are commissioned employees exempt from any overtime requirements pursuant to Section 3(D) of Industrial Welfare Commission Order No. 7-2001.

THIRTY-FIFTH AFFIRMATIVE DEFENSE

(Reservation of Rights)

Because of the vague language and allegations in the First Amended Complaint, including but not limited to several allegations that render the First Amended Complaint uncertain pursuant to California Code of Civil Procedure § 430.10(f), Defendants cannot anticipate all possible defenses at this time. As such, Defendants reserve their right to add additional separate defenses at an appropriate time.

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1 WHEREFORE, Defendants demand that Plaintiffs' First Amended Complaint be dismissed in  
2 its entirety with prejudice; that judgment be granted to Defendants with costs of suit and reasonable  
3 attorney's fees; and for such other relief that the Court shall deem just and proper.

4 Dated: February 28, 2007.

GREENBERG TRAURIG, LLP

5  
6 By:   
7 William J. Goines, Esq.

8 Attorneys for Defendants Polo Ralph Lauren  
9 Corporation; Polo Retail, LLC; Fashions Outlet  
10 of America, Inc.; and Polo Retail Corporation  
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Otsuka, et al. v. Polo Ralph Lauren Corporation, et al.

Case No. CGC-06-452655

**PROOF OF SERVICE**

I, Cathy Sandifer, am a citizen of the United States, over the age of eighteen years and not a party to the within action. I am an employee of GREENBERG TRAURIG, LLP, and my business address is 1900 University Avenue, Fifth Floor, East Palo Alto, CA 94303. On February 28, 2007, I served the following documents:

DEFENDANTS POLO RALPH LAUREN CORPORATION; POLO RETAIL, LLC;  
POLO RALPH LAUREN CORPORATION, DOING BUSINESS IN CALIFORNIA AS  
POLO RETAIL CORPORATION; AND FASHIONS OUTLET OF AMERICA, INC.'S  
ANSWER TO FIRST AMENDED COMPLAINT

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Law Offices of Patrick R. Kitchin  
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San Francisco, CA 94111  
(Fax: 415-627-9076)

Daniel Feder, Esq.  
Law Offices of Daniel L. Feder  
807 Montgomery St.  
San Francisco, CA 94133  
(Fax: 415-391-9432)

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//

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## **EXHIBIT 39**

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Attorneys for Defendants and Cross-Complainant  
 Polo Ralph Lauren Corporation et al.

ENDORSED FILED  
 SUPERIOR COURT  
 COUNTY OF SAN FRANCISCO

FEB 28 2007

GORDON PARK-LI, CLERK  
 BY: \_\_\_\_\_  
 Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
 FOR THE COUNTY OF SAN FRANCISCO

ANN OTSUKA, et al.,

Plaintiff(s),

v.

POLO RALPH LAUREN CORPORATION,  
 et al.,

Defendant(s).

Case No. CGC-06-450655

CROSS-COMPLAINT OF FASHIONS  
 OUTLET OF AMERICA, INC. FOR BREACH  
 OF FIDUCIARY DUTY AND CIVIL  
 CONSPIRACY TO COMMIT FRAUD

**BY FAX**

FASHIONS OUTLET OF AMERICA, INC.,  
 a Delaware Corporation,

Cross-Complainant,

v.

JUSTIN KISER, an individual; and ROES 1-  
 50, inclusive,

Cross-Defendant,

1 Defendant and Cross-Complainant FASHIONS OUTLET OF AMERICA, INC. (hereinafter  
2 "Polo") alleges as follows:

3 **PRELIMINARY ALLEGATIONS**

4 1. FASHIONS OUTLET OF AMERICA, INC. is, and at all relevant times mentioned  
5 in this Cross-Complaint is a Delaware Corporation.

6 2. Polo is further informed and believes, and thereon alleges, that Plaintiff and Cross-  
7 Defendant JUSTIN KISER ("Kiser") is an individual residing in Contra Costa County, California.  
8 Kiser was employed by Polo as a Sales Associate in the Ralph Lauren store located at 90 Post Street,  
9 San Francisco, California 94101 ("Polo store") between approximately July 11, 2004 to August 5,  
10 2005.

11 3. The true names and capacities, whether individual, corporate, associate or otherwise,  
12 of Cross-Defendants sued in this Cross-Complaint as ROES 1 through 50, inclusive, are unknown to  
13 Polo who sues those Cross-Defendants by fictitious names. Polo alleges on information and belief  
14 that each of the Cross-Defendants sued herein as ROES 1 through 50 are responsible in some manner  
15 for the events and obligations alleged herein. Polo will seek leave of court to amend this Cross-  
16 Complaint to allege their true names and capacities when ascertained.

17 **FACTS COMMON TO ALL CAUSES OF ACTION**

18 4. Plaintiff incorporates herein by reference Paragraphs 1-3, inclusive.

19 5. Upon information and belief, a former Polo employee by the name of Germania was  
20 improperly in possession of merchandise credit for use in any Polo store. Upon information and  
21 belief, the merchandise credits were either stolen and/or illegally obtained by Germania.

22 6. On or about June 22, 2005, while working as a Sales Associate in the Polo store,  
23 Kiser received a request from Germania to charge and send store merchandise using a merchandise  
24 credit. Germania specifically requested that Kiser enter data in the Point of Sale (POS) system under  
25 the fictitious name "Rose Cassamini" instead of her own name to avoid Polo's detection of their  
26 fraudulent activities. Germania also requested that Kiser send the merchandise addressed to "Rose  
27 Cassamini".  
28

1           7.       Kiser inquired with Operations Manager Theresa Cruz ("Cruz") if it was possible for  
2 him to use merchandise credit on a "send sale" purchase but never informed Cruz that the purchase  
3 was for Germania, instead telling her that it was for a customer by the name of "Rose Cassamini".

4           8.       Kiser knew that it was improper and against Polo policy to use a fictitious customer  
5 name to send store merchandise yet completed the sale and sent the merchandise to Germania under  
6 the guise of "Rose Cassamini".

7           9.       On or about July 20, 2005, Kiser accompanied Germania to the Polo Ralph Lauren  
8 Factory Store located in Vacaville, California ("Polo Vacaville Outlet"). While at the store, Germania  
9 attempted to make a purchase using the Polo employee discount. When the cashier informed  
10 Germania that she could not use the Polo employee discount since she was no longer a Polo  
11 employee, she requested that Kiser purchase her merchandise for her, utilizing his Polo employee  
12 discount and with her merchandise credit. Kiser complied with Germania's request and purchased her  
13 merchandise with her merchandise credit through his Polo employee discount, even though he knew  
14 that it was against Polo policy to do so.

15          10.       While working as a Sales Associate in the Polo store, Germania called Kiser to  
16 inquire about a pair of jeans in a size 30. Kiser checked the store inventory and then called Germania  
17 back informing her that the jeans were available in size 30. Germania requested that Kiser ring up her  
18 merchandise using two separate merchandise credits under the fictitious name "Gina Rochas".  
19 Germania further instructed Kiser to ring up her purchase when no managers were around. Kiser  
20 knew it was wrong to complete the sale under a fictitious name but completed the sale anyway.

21          11.       With respect to sales that Kiser improperly processed for Germania, he received an  
22 8% commission.

23          12.       Polo's Retail Employee Handbook prohibits dishonest conduct, including the  
24 "[L]ying or falsification in any manner related to employment." Polo Retail Employee Handbook at  
25 p. 21.  
26  
27  
28

13. Polo's Retail Employee Handbook prohibits employees from using their Polo employee discount "to purchase items for other individuals (other than as gifts)..." Polo Retail Employee Handbook at p. 23.

FIRST CAUSE OF ACTION  
(Breach of Fiduciary Duty)

14. Polo incorporates herein by reference Paragraphs 1-13 inclusive.

15. Kiser had a duty of loyalty as a Polo employee to act in the best interest of Polo, and to not take actions which would financially damage Polo. Kiser breached his fiduciary duty by manipulating records in the POS system under fictitious customer names in order to generate a sale.

16. Kiser further breached his fiduciary duty by utilizing his Polo employee discount for a non-Polo employee's financial benefit.

17. Kiser knew or had reason to know that the purchases made by Germania were made in bad faith when she requested that fictitious names be used instead of her own as to not draw suspicion. Kiser and Germania intentionally acted in bad faith by performing the sales transactions outside the presence of a manager to avoid Polo's detection of their fraudulent activities.

18. Kiser acted intentionally, willfully, in bad faith and in defiance of Kiser's duty of loyalty to Polo, and Kiser's conduct was oppressive and malicious entitling Polo to an award of punitive and exemplary damages.

19. As a proximate result of these acts of Kiser as herein-above described, Polo has been damaged in an amount to be determined at trial.

SECOND CAUSE OF ACTION  
(Civil Conspiracy to Commit Fraud)

20. Polo incorporates herein by reference Paragraphs 1-13 inclusive.

21. Kiser and Roes 1-50 formulated a common plan and conspiracy to commit fraud against Polo.

22. This plan was intended by all participants to, and in fact did, financially defraud Polo by providing access to the Polo employee discount by non-Polo employees for the non-Polo

1 employee's financial benefit by securing merchandise at a reduced price not available to the general  
2 public.

3 23. This plan was further intended by all participants to, and in fact did, financially  
4 defraud Polo by falsifying Polo documents and manipulating records in the Polo POS system to  
5 generate a sale and avoid suspicion by Polo management of potentially improper and/or fraudulent  
6 conduct.

7 24. Kiser knew or had reason to know that the purchases made by Germania were made  
8 in bad faith when she requested that fictitious names be used instead of her own to avoid Polo's  
9 detection of her fraudulent activities. Kiser and Germania intentionally acted in bad faith by  
10 performing the sales transactions outside the presence of a manager to avoid Polo's detection of their  
11 fraudulent activities.

12 25. Polo has incurred damages as a result of the aforementioned conspiracy including  
13 the value of fraudulent merchandise credits and concomitant commission payments to Kiser.

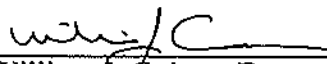
14 26. Kiser's conduct was oppressive and malicious entitling Polo to an award of punitive  
15 and exemplary damages.

16 WHEREFORE, Plaintiffs pray for judgment against Defendant as set forth below.

- 17 1. For compensatory damages in an amount to be proven at trial;
- 18 2. For interest on all damages at the legal rate according to proof;
- 19 3. For attorney's fees;
- 20 4. For punitive and exemplary damages;
- 21 5. For costs of suit incurred; and
- 22 5. For such other and further relief as the court may deem just and proper.

23 Dated: February 28, 2007.

GREENBERG TRAURIG, LLP

25 By:   
26 William J. Goines, Esq.  
27 Attorneys for Defendants and Cross-Complainant  
28 Polo

Otsuka, et al. v. Polo Ralph Lauren Corporation, et al.

Case No. CGC-06-452655

**PROOF OF SERVICE**

I, Cathy Sandifer, am a citizen of the United States, over the age of eighteen years and not a party to the within action. I am an employee of GREENBERG TRAURIG, LLP, and my business address is 1900 University Avenue, Fifth Floor, East Palo Alto, CA 94303. On February 28, 2007, I served the following documents:

**CROSS-COMPLAINT OF FASHIONS OUTLET OF AMERICA, INC. FOR BREACH OF FIDUCIARY DUTY AND CIVIL CONSPIRACY TO COMMIT FRAUD**

☒ by transmitting via **FACSIMILE** the document(s) listed above to the fax numbers) set forth below, or as stated on the attached service list, on this date at approximately \_\_\_\_\_, from the sending facsimile machine telephone number of 650-289-7893. The transmission was reported as complete and without error by the machine. Pursuant to California Rules of Court, Rule 2008(e)(4), I caused the machine to print a transmission record of the transmission, a copy of which is attached to the original of this declaration. The transmission report was properly issued by the transmitting facsimile machine.

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565 Commercial St., 4<sup>th</sup> Fl.  
San Francisco, CA 94111  
(Fax: 415-627-9076)

Daniel Feder, Esq.  
Law Offices of Daniel L. Feder  
807 Montgomery St.  
San Francisco, CA 94133  
(Fax: 415-391-9432)

I am readily familiar with the business practice of my place of employment in respect to the collection and processing of correspondence, pleadings and notices for mailing with United States Postal Service/Express Mail, Federal Express and other overnight mail services. The foregoing sealed envelope was placed for collection and mailing this date consistent with the ordinary business practice of my place of employment, so that it will be picked up this date with postage thereon fully prepaid at East Palo Alto, California, in the ordinary course of such business.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

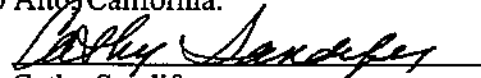
Executed on February 28, 2007, at East Palo Alto, California.

  
Cathy Sandifer

Proof of Service

1 I declare under penalty of perjury under the laws of the State of California that the foregoing is true and  
2 correct.

3 Executed on February 28, 2007, at East Palo Alto, California.

4   
Cathy Sandifer



## MESSAGE CONFIRMATION

02/28/2007 13:05  
ID=GREENBERG TRAURG LLP

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02/28/2007 13:01 GREENBERG TRAURG LLP → 2321#093800#14156279076# NO.144 0001

**Greenberg  
Traurig**

## Transmittal Cover Sheet

From: Cathy Sandifer, Secretary to  
William J. GoinesTel:  
650.289.7862E-Mail:  
sandiferc@gtlaw.com

To:	Fax No:	Company:	Phone No.:
Patrick R. Kitchin, Esq	(415) 627-9076	Law Offices of Patrick R. Kitchin	(415) 677-9058
Daniel Feder, Esq.	(415) 391-9432	Law Offices of Daniel L. Feder	(415) 391-9476

File No.: 62321-093800

Re: Otsuka, et al. v. Polo Ralph Lauren Corporation, et al.

Date: February 28, 2007

No. Pages: Including Cover Sheet / 8

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Notes: Attached please find the Answer to First Amended Complaint and Fashions Outlet of America, Inc.'s Cross-Complaint against Justin Kiser.

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02/28/2007 13:02 GREENBERG TRAURG LLP → 2321#093800#14153919432# NO.145 P001

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Traurig**

## Transmittal Cover Sheet

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William J. GoinesTel:  
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sandiferc@gtlaw.com

To:	Fax No:	Company:	Phone No.:
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File No.: 62321-093800

Re: Otsuka, et al. v. Polo Ralph Lauren Corporation, et al.

Date: February 28, 2007

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**EXHIBIT 40**

604103/02

**ENDORSED  
FILED**  
San Francisco County Superior Court

APR 03 2007

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BY: WESLEY HANCOCK  
Deputy Clerk

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Attorneys for Defendants Polo Ralph Lauren  
Corporation; Polo Retail, LLC; Polo Ralph Lauren  
Corporation, doing business in California as Polo  
Retail Corporation; and Fashions Outlet of America, Inc.

(See Last Page for Additional Names of Counsel for the Parties).

**SUPERIOR COURT OF CALIFORNIA, CITY AND COUNTY OF SAN FRANCISCO**

ANN OTSUKA, an individual; JANIS KEEFE, ) Case No.: CGC-06-452655  
an individual; CORINNE PHIPPS, an )  
individual; and JUSTIN KISER, an individual; ) **JOINT CASE MANAGEMENT**  
individually and on behalf of all others similarly ) **CONFERENCE STATEMENT**  
situated, )

Plaintiffs,

vs.

POLO RALPH LAUREN CORPORATION; a )  
Delaware Corporation; et al. and DOES 1-500, )  
inclusive, )

Defendants.

Date: April 5, 2007

Time: 1:30 p.m.

Department: 304

Hon Richard A. Kramer

Complaint Filed: May 30, 2006

Trial Date: None Set

**BY FAX**

1 Plaintiffs Ann Otsuka, Janis Keefe, Corinne Phipps and Justin Kiser ("Plaintiffs"), and  
2 Defendants Polo Ralph Lauren Corporation, Polo Retail, LLC, Polo Ralph Lauren Corporation,  
3 doing business as Polo Retail Corporation, and Fashions Outlet of America, Inc. ("Defendants"),  
4 hereby submit this Joint Case Management Conference Statement in advance of the April 5, 2007,  
5 Case Management Conference.

6 A. Nature of Case

7 Plaintiffs filed this class action lawsuit on May 30, 2006. On July 20, 2006, Plaintiffs filed  
8 their First Amended Complaint to add claims under the California Private Attorneys General  
9 Action, Labor Code §§ 2699, et seq., seeking recovery on civil penalties on behalf of themselves,  
10 the putative class and the State of California. Plaintiffs' First Amended Complaint alleges various  
11 labor law violations, including fraud, false imprisonment, failure to pay wages earned, failure to  
12 pay wages timely, failing to pay premium overtime, breach of contract, failure to provide workers  
13 with rest breaks, unjust enrichment, violations of Business and Professions Code §§ 17200, et seq.,  
14 and violations of the Private Attorneys General Act.

15 On October 12, 2006, Defendants demurred to Plaintiffs' First Amended Complaint on  
16 several grounds. The hearing on that motion was held January 22, 2007, and the demurrer was  
17 sustained in part and overruled in part. Since that time, the parties have engaged in discussions  
18 regarding discovery, Polo has filed its Answer and a Cross-Complaint on Kiser for breach of  
19 fiduciary duty and civil conspiracy to commit fraud, and the parties' counsel have met and  
20 conferred in some detail as to ongoing discovery issues.

21 B. Status Of Discovery

22 1. Plaintiffs

23 Plaintiffs served extensive written discovery on all Defendants, focused on issues relevant  
24 to class certification. This discovery seeks (1) information regarding the numbers of employees  
25 working at each Polo store in California during the statute of limitations, store by store; (2)  
26 descriptions of and documents pertaining to relevant employment practices and policies during the  
27 statute of limitations period, store by store; and (3) the persons most knowledgeable about relevant  
28 employment policies and practice during the statute of limitations period, store by store. While the

1 number of individual questions and requests in this discovery is extensive, the discovery is sharply  
2 focused and designed to elicit information relating only to issues of typicality, commonality and  
3 numerosity. It is designed to permit Plaintiffs to evaluate class certification issues. Defendants'  
4 counsel has indicated his client is working now on discovery responses. Defendants have had  
5 several months to collect responsive information. Plaintiffs request the Court set a responsive date  
6 for 32 days from the date of the Case Management Conference: May 7, 2007.

7 Plaintiffs also served 10 notices of depositions of Defendants' managers and persons most  
8 knowledgeable. The parties are working on scheduling these depositions at this time, evaluating  
9 dates in June 2007.

10 All Plaintiffs have responded to Defendants' first set of requests for production. Plaintiffs  
11 Corinne Phipps and Just Kiser have responded to Defendants' first set of special interrogatories.  
12 Defendants have served notices of deposition of all Plaintiffs, but have not scheduled dates, times  
13 and places yet. The parties are working on scheduling dates for these depositions in May 2007.

14 In their portion of this Statement, Defendants mischaracterize the status of discovery.  
15 Plaintiffs have provided proper, verified, responses to Defendants' discovery (see, above),  
16 specifically informing them that damages cannot be addressed, even on behalf of the individual  
17 Plaintiffs, until Polo has provided all wage and timekeeping records. Defendants delayed  
18 providing Plaintiffs with their wage records until Mach 29, 2007. The records Defendants have  
19 provided are unverified and, according to Defendants' counsel, are incomplete. Once these  
20 records are complete and Plaintiffs have been served with discovery addressing their analysis of  
21 these records, Plaintiffs will provide responses relating to their individual damages.

22 In addition to mischaracterizing the status of discovery, Defendants mischaracterize  
23 Plaintiffs' discovery obligations. Defendants suggest Plaintiffs have an ongoing duty to  
24 supplement discovery responses that were based on all information available to them at the time  
25 discovery responses were provided. Under California law, so-called "continuing interrogatories"  
26 are expressly prohibited. (See, Code of Civil Procedure § 2030.060(g).) Thus, Defendants'  
27 request for an order compelling Plaintiffs to supplement their discovery responses must be denied  
28 as procedurally defective.

1 Plaintiffs intend to commence discovery relating to their California Private Attorneys  
2 General Act ("PAGA"). Plaintiffs are entitled to broad discovery on these claims and are not  
3 required to obtain class certification prior to conducting that discovery.

4 Absent unanticipated delays caused by Defendants, Plaintiffs will be in a position to file  
5 their motion for class certification in or about August 2007.

6 2. Defendants

7 At the initial complex litigation Case Management Conference ("CMC") held on January  
8 22, 2007, Polo indicated that it required certain damage information from Plaintiffs in order to  
9 adequately assess its potential rights to removal and the Court, acknowledging the significance of  
10 the jurisdictional issues involved, urged the Plaintiffs and counsel to make an effort to discuss and  
11 try to determine amounts in controversy. Counsel have since met and conferred regarding this and  
12 other discovery matters and Polo has again sought, in particular, disclosure from Plaintiffs of  
13 fundamental damage claim information and documents necessary to allow it to assess jurisdiction  
14 and removal. To date, however, Polo has not received meaningful Plaintiffs' damage calculations,  
15 claims or data, nor any other adequate discovery responses and/or documents sufficient to allow  
16 Polo to adequately evaluate the potential for any removal to federal court.

17 Defendants served extensive Requests for Production of Documents on October 27, 2006,  
18 Special Interrogatories on November 20, 2006, and Deposition Notices on October 27, 2006 to  
19 each of the named Plaintiffs. Plaintiffs served responses to Defendants' Request for Production of  
20 Documents on December 12, 2006 and produced certain electronic documents on January 11,  
21 2006. Plaintiffs served responses to Defendants' Request for Special Interrogatories as to  
22 Plaintiffs Kiser and Phipps on January 15, 2006. Plaintiffs' responses to Defendants' Special  
23 Interrogatories for Plaintiffs Otsuka and Keefe remain outstanding and Polo requires these and  
24 other responses to assess damages, factual claims, and liability issues.

25 Polo's interrogatories to Plaintiffs sought in great detail and with much specificity a variety  
26 of underlying damage amounts. Plaintiffs' limited interrogatory responses, however, have so far  
27 been largely evasive or non-responsive as to the amounts and nature of Plaintiffs' underlying  
28 damages (and more).

1 Polo produced on March 28, 2007 company documents in response to Plaintiffs' requests  
2 (but no formal written responses in light of the Court's prior directives concerning the flow of  
3 discovery). Documents produced from Defendants include personnel files of Plaintiffs,  
4 spreadsheets relating to the named Plaintiffs' commissions and wages, and other responsive  
5 documents (all Bates stamped and designated as "confidential"). Polo anticipates serving  
6 responses to Plaintiffs' interrogatories in the next thirty days.

7 Further, on March 28, 2007 the parties submitted to the Court for its approval and entry a  
8 proposed Stipulated Protective Order.

9 In light of the current exchange of interrogatory responses, supplemental documents and  
10 other related ongoing informal and formal discovery, Polo's prior noticed depositions for each of  
11 the named Plaintiffs have been continued to dates in April, 2007. In addition, on February 2, 2007  
12 Plaintiffs served notices for April 2007 depositions of ten different Polo representatives and  
13 employees, including that for the "Person Most Qualified" ("PMQ"). These additional depositions  
14 are presently being re-scheduled due to witnesses' availability and location (the PMQ may reside  
15 in New York), as well as due to the outstanding schedule for prior depositions and other written  
16 discovery. Defendants intend on completing the prior noticed depositions of Plaintiffs prior to  
17 subsequently noticed depositions taking place, and are working with Plaintiffs' counsel to set an  
18 agreeable timetable for the fourteen currently noticed depositions. Defendants anticipate taking  
19 depositions in the next 60 days.

20 Extensive further written, documentary and oral discovery is anticipated over the coming  
21 months. Given the complexity and volume of anticipated discovery, Defendants expect that  
22 discovery will be completed in or about December 2007.

23 C. Anticipated Motions

24 1. Plaintiffs

25 **Severance of Cross Complaint (Code of Civil Procedure § 1048(b)):** On February 28,  
26 2007, Defendants filed a cross complaint against Plaintiff Justin Kiser. Defendants' allege Justin  
27 Kiser committed employee discount fraud by using his status as an employee to obtain a discount  
28



1 on the purchase of Polo products for a non-employee, and are apparently seeking around fifty  
2 dollars, plus punitive damages. Defendants' cross complaint is designed to increase the  
3 complexity of this litigation and should not be permitted to side-track this class action lawsuit.

4 While the cross complaint is not technically a SLAPP lawsuit, it was filed more than one year after  
5 the alleged discount fraud and only after Kiser had filed this employment class action against  
6 Defendants, and it is designed to have similar effect to a SLAPP lawsuit. The cross complaint is,  
7 at best, a small claims matter, that should not be litigated with this complex, class action.

8 Plaintiffs request that the Court use its discretionary authority under Code of Civil Procedure §  
9 1048(b) to order the cross complaint 'severed' so it may be heard in the small claims division  
10 where it belongs.

11 If the Court wishes briefing on issues relating to the severance of Defendants' cross  
12 complaint against Justin Kiser, Plaintiffs request setting a date as soon as the Court's calendar will  
13 permit.

14 Finally, Plaintiff Justin Kiser intends to file a demurrer to this cross complaint.

15 **Discovery Motions:** Plaintiffs anticipate the need for the Court's involvement in issues  
16 relating to the class-wide discovery rights of the parties. While Plaintiffs have limited their first  
17 set of discovery requests to matters relating to "numerosity, typicality and commonality," Plaintiffs  
18 understand Defendants may have a different perspective on the appropriateness of some of their  
19 discovery. In addition, Plaintiffs believe they are entitled to merits discovery at this time on their  
20 Private Attorneys General Act claims. If Defendants have a different perspective, the Court's  
21 assistance will be required.

22 **Motion for Class Certification:** Plaintiffs intend to seek class certification as quickly as  
23 possible following the completion of the discovery discussed above. With the cooperation of  
24 Defendants on scheduling issues, and minimum discovery disputes, Plaintiffs believe their motion  
25 for class certification can be filed no later than September 2007.

1       **Motion for Summary Adjudication:** As discovery proceeds Plaintiffs will evaluate the  
2 appropriateness of resolving limited legal issues through summary adjudication.

3               2.     Defendants

4       This Court sustained in part and overruled in part Polo's demurrer to Plaintiffs' First  
5 Amended Complaint at the hearing on January 22, 2007, entered its order on February 5, 2007, and  
6 notice of entry of order was served on Polo on February 13, 2007. Polo timely filed and served its  
7 Answer to the First Amended Complaint on February 28, 2007 and, at the same time, Fashions  
8 Outlet of America, Inc. filed and served its Cross-Complaint against Plaintiff Kiser. The Cross-  
9 Complaint seeks relief for breach of fiduciary duty and for civil conspiracy to commit fraud.  
10 Plaintiff's responsive filing to the Cross-Complaint was due on April 4, 2007, and an extension has  
11 been granted through and until April 24, 2007.

12       Polo has only as of April 2, 2007 (pursuant to this filing) been apprised that Plaintiffs  
13 would request severance pursuant to Code of Civil Procedure Section 1048(b) -- and Polo objects to  
14 any such transfer or severance and to the procedure used by Plaintiffs to make this request. Polo  
15 has granted an extension of time for Plaintiffs to respond, and Polo requires an opportunity to  
16 respond to this severance request. Absent a regularly noticed hearing and briefing schedule, Polo  
17 would be unduly prejudiced were the Court to entertain such a severance request (motion) in the  
18 guise of this Case Management Conference.

19       **Discovery Motions:**

20       As indicated above, Polo raised the issue of removal during the January 22, 2007 CMC and  
21 the Court, acknowledging the jurisdictional information required to allow Polo to make its removal  
22 analysis, then urged Plaintiffs to provide meaningful discovery as to their damage claims. Polo  
23 has sought specific damage information through formal discovery in its prior document and  
24 interrogatory requests to each of the Plaintiffs, as well as pursuant to informal meet and confer  
25 discussions since the last CMC. All responses received to date from Plaintiffs have been  
26 inadequate and incomplete as to damage claims, and Polo is thus unable to fully assess its removal  
27 rights.

1 Defendants still require sufficiently well-tailored and precise damage responses from  
2 Plaintiffs. Defendants continue to meet and confer with Plaintiffs' counsel on a regular basis in an  
3 effort to resolve these and other discovery matters, but now request the Court further urge or order  
4 Plaintiffs to provide supplemental documentation and interrogatory responses and/or any other  
5 relevant information and data necessary to a meaningful initial analysis of alleged damages.  
6 Absent further immediate production or responses related to damages, Polo reserves the right to  
7 file a formal motion to compel documents and/or supplemental interrogatory responses.

8 **Motion for Summary Judgment/Adjudication:** After significant discovery has been  
9 concluded, Defendants may file a Motion for Summary Judgment as to all of Plaintiffs' claims, or,  
10 in the alternative, a Motion for Summary Adjudication as to some of Plaintiffs' claims.

11 D. Alternative Dispute Resolution

12 1. Plaintiffs

13 Plaintiffs are amenable to private mediation following the completion of sufficient  
14 discovery to evaluate liability and damages.

15 2. Defendants

16 Defendants remain amenable to private mediation or other appropriate non binding neutral  
17 evaluation following the completion of sufficient discovery to evaluate Plaintiffs' claims.

18 E. Trial

19 1. Plaintiffs

20 While Plaintiffs are not yet in a position to accurately estimate when this matter will be  
21 ready for trial, they intend to move this matter forward as expeditiously as possible. Plaintiffs  
22 request that the Court set a trial date at a subsequent Case Management Conference following the  
23 completion of the discovery described above.

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25 ///

26 ///

27 ///


28 ///

2. Defendants

Defendants request the Court hold a trial setting conference to determine an appropriate trial date once discovery timelines and closure dates have been established.

DATED: April 2, 2007

THE LAW OFFICE OF PATRICK R. KITCHIN

By:   
Patrick R. Kitchin, Esq.  
Attorneys for Plaintiffs

DATED: April 2, 2007

GREENBERG TRAURIG

By \_\_\_\_\_  
William J. Goines  
Jeremy A. Meier  
Alisha M. Louie

Attorneys for Defendants Polo Ralph Lauren Corporation; Polo Retail, LLC; Fashions Outlet of America, Inc.; and Polo Retail Corporation

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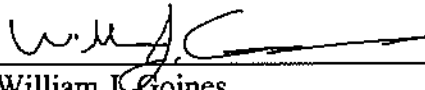
DATED: April 2, 2007

THE LAW OFFICE OF PATRICK R. KITCHIN

By: \_\_\_\_\_  
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DATED: April 2, 2007

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